

ATTORNEYS GENERAL - 42 Op. Att'y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties do not accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

CITIES AND TOWNS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

EMPLOYEES, PUBLIC - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

FIRE DEPARTMENTS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

MUNICIPAL GOVERNMENT - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

POLICE DEPARTMENTS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

VACATION AND SICK LEAVE - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;

ADMINISTRATIVE RULES OF MONTANA - Section 2.21.221;

MONTANA CODE ANNOTATED - Sections 2-18-611, (2), (3), (4), (5), (6), -612(2)(a)(i), -618, 7-32-4132, (1), (2), 7-33-4133, (1), (2);

OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 156 (1978), 42 Op. Att'y Gen. No. 114 (1988).

- HELD:
1. Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.
  2. 42 Op. Att'y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties do not accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.

October 22, 2008

Mr. Jim Nugent  
Missoula City Attorney  
435 Ryman  
Missoula, MT 59620-1401

Dear Mr. Nugent:

**[P1]** You have requested an opinion from the Attorney General on the question of whether police officers and firefighters receiving payments under Mont. Code Ann. § 7-32-4132 earn vacation and sick leave credits during the period in which they receive payments. With respect to police officers, Attorney General Greely held in 42 Op. Att'y Gen. No. 114 (1988) that such benefits are not payable. For the following reasons, I disagree with that conclusion, and overrule that opinion.

**[P2]** With respect to police officers, Mont. Code Ann. § 7-32-4132 provides:

(1) A member of a municipal law enforcement agency of a municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from

workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury.

**[P3]** Similarly, with respect to firefighters, Mont. Code Ann. § 7-33-4133 provides:

(1) A member of a fire department of a first-class or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

**[P4]** In 42 Op. Att'y Gen. No. 114 (1988), Attorney General Greely noted that no specific language in Mont. Code Ann. § 7-32-4132 addressed the issue of accrual of leave. He then found that the general rules for accrual of leave apply in absence of specific statutory language. The vacation leave statute require that the employee be "in a pay status" to be entitled to accrue benefits. Mont. Code Ann. §§ 2-18-612(2)(a)(i). The opinion concludes, without extensive analysis, that police officers receiving payments under Mont. Code Ann. § 7-32-4132 are not "in a pay status" and therefore are not entitled to accrue vacation and sick leave.

**[P5]** I disagree with the conclusion that police officers are not "in a pay status" when they receive payments under §§ 7-32-4132 and 7-33-4133. Under the statutes, the officers and firefighters are receiving payments in the amount of their annual salary, see 37 Op. Att'y Gen. No. 156 (1978), with deductions taken for the cost of retirement benefits, see, e.g., § 7-32-4132 (member must receive "the difference between the member's net salary, following adjustments for income taxes and pension contributions," and workers' compensation benefits.) (emphasis added). The officers (and firefighters) remain on the city payroll and receive their payments through the normal payroll process.

[P6] The term “pay status” has no statutory definition. Montana Code Annotated § 2-18-611 deals with accrual of annual leave for employees, and makes specific provision in subsections (2)-(6) for the accrual of credits for seasonal workers, part-time workers, and temporary workers, and excludes benefits for short term workers and employees on leave without pay. It makes no mention of excluding city employees covered by Mont. Code Ann. §§ 7-32-4132 and 7-33-4133. Additionally, Mont. Admin. R. § 2.21.221 provides: “Hours in a pay status at the regular rate will be used to calculate leave accrual. \*\*\*” The statutes for both police officers and firefighters require that they be paid their “net salary,” i.e. at their regular rate.

[P7] Montana Code Annotated § 2-18-618 does not refer specifically to firefighters “in a pay status,” but the result should be the same. Both Mont. Code Ann. §§ 2-18-611 and 2-18-618 exclude benefits for employees on leave without pay status, but contain no other specific exclusions. It is not logical to conclude that the legislature would decide to extend benefits to one group of employees and deny them to another when the only specific exclusion--for employees in leave without pay status--is the same for both groups.

[P8] The legislature provided these benefits in an effort to keep officers and firefighters injured in the line of duty financially whole until they could return to duty or one year elapsed. It is my opinion that these officers and firefighters are entitled by statute to accrue sick and vacation credit for the time they are “in pay status,” i.e. not on leave without pay, and receiving these benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133. To the extent that 42 Op. Att’y Gen. No. 114 (1988) holds to the contrary it is overruled. I express no opinion here regarding any officers receiving similar benefits who are in leave without pay status or otherwise not receiving payments through the usual payroll system.

THEREFORE IT IS MY OPINION:

1. Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.
2. 42 Op. Att’y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their

Mr. Jim Nugent  
October 22, 2008  
Page 5

regular duties do not accrue vacation and sick leave credit under Mont.  
Code Ann. §§ 2-18-611, 2-18-618.

Sincerely,

MIKE McGRATH  
Attorney General

mm/cdt/jym